

State of California
Department of Health Services

September 26, 2003

CHDP Information Notice No.: 03-N

TO: ALL CHILD HEALTH AND DISABILITY PREVENTION (CHDP)
DEPUTY DIRECTORS, MEDICAL CONSULTANTS, STATE
CHILDREN'S MEDICAL SERVICES (CMS) BRANCH STAFF AND
REGIONAL OFFICE STAFF

SUBJECT: THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
ACT (HIPAA) AND IMMUNIZATION RECORDS

The purpose of this Information Notice is to forward a letter (enclosed) from Howard Backer, M.D., M.P.H., Acting Chief of the Immunization Branch, concerning HIPAA and Immunization Records. The enclosures to Dr. Backer's letter are a Fact sheet on HIPAA and frequently asked questions about HIPAA and access to patient records during Assessment, Feedback, Incentives Exchange (AFIX) and Vaccines for Children (VFC) public health site visits.

If you have any questions, please contact your Regional Nurse Consultant.

Original Signed by Maridee Gregory, M.D.

Maridee A. Gregory, M.D., Chief
Children's Medical Services Branch

Enclosures



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State of California—Health and Human Services Agency
Department of Health Services



GRAY DAVIS
Governor

5 September 2003

TO: AFIX and VFC Providers

FROM: Howard Backer, MD, MPH
Acting Chief, Immunization Branch

RE: **HIPAA and Immunization Records**

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which went into effect in April 2003, establishes national standards for consumer privacy protection and insurance market reform. The HIPAA provisions for sharing health care information with public health entities are different from other health care entities, which may be confusing to health care providers. This letter is intended to clarify what health information may be shared with public health officials and representatives of the Vaccine for Children Program. The two attachments, "HIPAA and Public Health Factsheet" and "HIPAA and Public Health Site Visits: Access to Patient Records during AFIX and VFC Visits", were both prepared by legal counsel for the Centers for Disease Control and Prevention (CDC) and provide details and citations.

In summary, the new HIPAA regulations allow your facility to disclose health information, including protected health information, to public health authorities such as the California Department of Health Services, Immunization Branch, and local health departments, when disclosure is related to public health activities and/or when such disclosure is required by law. Review of provider procedures and patient charts in order to assess immunization coverage and to verify compliance with immunization practice standards is an integral part of traditional public health activity. Information will be treated with absolute respect for the privacy of all patients. The information being requested represents the minimum necessary to carry out the public health purposes of this project.

We are grateful for all your efforts to protect California's children through immunizations. If you have further questions or concerns, please contact your local health department.

Enclosures

cc: DHS, Immunization Branch Field Representatives
Local Health Department Immunization Coordinators
VFC Health Facility Evaluators



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Centers for Disease Control and Prevention National Immunization Program

Health Insurance Portability and Accountability Act and Public Health

Factsheet

What is HIPAA?

The Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) established a national floor of consumer privacy protection and marketplace reform. Some key provisions include: insurance reforms, privacy and security, administrative simplification, and cost savings.

What is the HIPAA Privacy Rule?

HIPAA required Congress to enact privacy legislation by August 1999 or the Secretary of DHHS was to develop regulations protecting privacy. The HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) sets national minimal standards for protected health information.

Implications for Public Health

The Privacy Rule strikes a balance between protecting patient information and allowing traditional public health activities to continue. Disclosure of patient health information without the authorization of the individual is permitted for purposes including but not limited to 1) disclosures required by law (45 CFR § 164.512(a)) or 2) for “public health activities and purposes.” This includes disclosure to “a public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, vital events. . . , and the conduct of public health surveillance,. . . investigations, and. . . interventions.” (45 CFR § 164.512(b)(i))

Definition of Public Health Authority

Defined as “an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandates.” (45 CFR § 164.501)

Centers for Disease Control and Prevention National Immunization Program

HIPAA and Public Health Site Visits Access to Patient Records during AFIX and VFC Visits

Responses to Frequently Asked Questions about AFIX and VFC

This guidance is intended to give health care providers and public health agencies specific information regarding the HIPAA Privacy Rule and access to patient records during Assessment, Feedback, Incentives, Exchange (AFIX) and Vaccines for Children (VFC) site visits. Several frequently asked questions posed to the CDC legal counsel for interpretation are presented below. Additional sources of information and reference materials available on the internet are also included.

Q. 1. Can patient records be reviewed by health department staff, or their contractual agents such as the American Academy of Pediatrics (AAP) or the Visiting Nurses Association (VNA), for the purpose of conducting AFIX provider site visits?

A. 1. Yes. Under 45 CFR § 164.512(b) of the HIPAA Privacy Rule, covered entities may disclose protected health information without authorization to public health authorities that are authorized by law to collect such information for public health purposes. AFIX, authorized under section 317 of the Public Health Service Act, is a public health strategy to raise immunization coverage levels and improve standards of practices at the provider level. AFIX providers, as covered entities, may share patient records with health department staff or their contractors because a health department is a public health authority authorized by law to review patient records for AFIX purposes, or because health department contractors are acting under a grant of authority from a public health authority. In addition, state health departments may have authority under applicable state law to collect this information.

Q. 2. Can patient records be reviewed by health officials or their agents for the purpose of conducting VFC provider site visits?

A. 2. Yes. As explained in A. 1. above, under 45 CFR § 164.512(b) of the HIPAA Privacy Rule, covered entities may disclose protected health information without authorization to public health authorities that are authorized by law to collect such information for public health purposes. VFC is a public health program that provides vaccines for children in certain eligibility groups. The VFC program was authorized under Section 1928 of the Social Security Act and has been delegated to CDC to administer. VFC providers, as covered entities, may share patient records with health officials or their agents because a health department is a public health authority authorized by law to review patient records for VFC purposes, or because contractors are acting under a grant of authority from a public health authority.

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Q. 3. Are VFC providers required to allow health officials access to the immunization records of children in their practice to determine compliance with VFC requirements?

A. 3. The HIPAA Privacy Rule permits providers to share immunization records with public health officials for public health purposes as otherwise authorized by law. Under the VFC statute, at 42 U.S.C. 1396s(c)(2), as a condition of participation in the VFC program providers must share immunization records with health officials to verify compliance with VFC program requirements, including:

- 1) screening of all children in their practice to determine VFC eligibility;
- 2) to determine provider compliance with the VFC immunization schedule regarding the appropriate periodicity, dosage and contraindications applicable to the vaccines;
- 3) to determine provider compliance with applicable State law, including any such law relating to any religious or other exemption;
- 4) to verify that VFC vaccine-eligible children are not being charged for the cost of the vaccine;
- 5) to verify that any administration fees being charged do not exceed the caps established by CMS;
- 6) to verify that the provider does not deny administration of vaccine to vaccine-eligible children due to the inability of the child's parent to pay an administration fee.

Q. 4. Can health care providers, daycare operators, Head Start and school officials share immunization information with another provider or school to update missing immunization history or bring children into compliance with daycare, Head Start and school requirements?

A. 4. Health care providers (or other covered entities) may share immunization information with other health care providers as needed to make treatment decisions, such as to give further immunizations. Providers may also disclose immunization information to schools, without authorization, if permitted or required by State law. These State laws would not be preempted by the Privacy Rule. (45 CFR 160.203(c)). In the absence of such a State law, it appears that such disclosures to schools will require individual authorization. Immunization records held by day care centers and schools are not protected health information under the Privacy Rule. Disclosures of immunization information by schools is covered by the Family Educational Rights and Privacy Act (FERPA). (45 CFR 164.501).

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Q. 5. Can patient identifiers, including name and birthdate, be collected and stored electronically, incidental to AFIX or VFC visits?

A. 5. Yes. Under 45 CFR § 164.512(b) of the HIPAA Privacy Rule, covered entities may disclose protected health information--including name, birthdate, and other individually identifiable health information--to public health authorities that are authorized by law to collect such information for public health purposes. However, other requirements of the Privacy Rule (including minimum necessary, verification of identity, and accounting requirements) may apply to covered entities making these disclosures. For a full explanation of these requirements, see the website of the Office for Civil Rights (www.hhs.gov/ocr/hipaa) (responsible for enforcing the Privacy Rule), or CDC/DHHS guidance on the Privacy Rule and Public Health, available at <http://www.cdc.gov/mmwr/pdf/other/m2e411.pdf>. Once protected health information has been disclosed to a public health authority for a public health activity pursuant to section 164.512(b) of the Privacy Rule, the information may be stored in whatever way is reasonable for conducting the public health activity, including electronically, so long as the storage is consistent with other applicable State and Federal law.

Links to additional sources of information may be found on the CDC website at www.cdc.gov/nip/registry

8/11/03